

107 FERC ¶ 61,308
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Tenaska Power Services Co.

Docket No. EL04-43-001

v.

Midwest Independent Transmission
System Operator, Inc.

Cargill Power Markets, LLC

Docket No. EL04-46-001
(Not Consolidated)

v.

Midwest Independent Transmission
System Operator, Inc.

ORDER DENYING REHEARING

(Issued June 23, 2004)

1. In this order the Commission denies rehearing of the order issued on March 8, 2004, in these proceedings (March 8 Order).¹ This order benefits customers by providing certainty to Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) customers concerning the processing of rollover requests and competing requests.

¹ Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., et al., 106 FERC ¶ 61,230 (2004).

Background

2. On December 23, 2003, Tenaska Power Services Co. (Tenaska) filed a complaint against Midwest ISO in Docket No. EL04-43-000. Tenaska alleged that Midwest ISO improperly processed its transmission queue by allowing later-queued new service requests to preempt earlier-queued requests to rollover existing long-term firm reservations and that Midwest ISO's scheduling procedures did not comport with Order No. 638.²

3. On December 29, 2003, Cargill Power Markets, LLC (Cargill) filed a complaint against Midwest ISO in Docket No. EL04-46-000. Cargill alleged that Midwest ISO changed its treatment of rollover rights through a notice that was posted on Midwest ISO's OASIS on October 31, 2003 (October 31 Notice) and that this change was presented to its transmission customers with almost no notice and without a proper vetting through the stakeholder process. Cargill also alleged that Midwest ISO's change in its treatment of rollover rights was inconsistent with its open access transmission tariff (OATT) and Business Practices as well as Commission policy and precedent.

4. The March 8 Order granted the two complaints. The Commission found that section 2.2 of the pro forma OATT does not define whether a "competing request" can be made prior to a renewal request, subsequent to a renewal request, or both. The Commission then found that: (1) Midwest ISO's Business Practices provided that a customer making a new request for service that could not be accommodated has the option of having an impact study done or having the request held in study mode until other customers exercised their rollover rights; and (2) on October 31, 2003, Midwest ISO changed this approach and posted a notice indicating that competing requests may be submitted only after a rollover request is submitted. The Commission found this approach unreasonable because the October 31 Notice resulted in a new policy which was neither reasonably noticed to Midwest ISO's customers nor properly vetted through Midwest ISO's stakeholder process. The Commission also found that the twenty-four hour period for rollover requests to decide whether to match competing requests was unreasonable. The Commission further explained that even if the methodology expressed in the October 31 Notice was reasonably noticed and vetted through the stakeholder process, the approach was inconsistent with Commission policy and precedent because it allowed a rollover customer to wait until the last moment before the deadline to exercise its rollover rights and thus eliminate any competing requests. The Commission concluded that since Midwest ISO's methodology may make it impossible to ever have a competing request, such a methodology would be inconsistent with section 2.2 and our precedent. Finally, the Commission found that Midwest ISO's methodology was

² Open Access Same-Time Information System and Standards of Conduct, Order No. 638, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,093 (2000).

discriminatory because it required rollover requests to match subsequent new service requests, but did not require rollover requests that were submitted after new service requests to match those new service requests (all of which service was to commence or rollover on the same date).

5. The Commission directed Midwest ISO to reprocess the transmission queue to reconsider Tenaska's and Cargill's requests, as well as other transmission service requests that were submitted from March 2003 through December 31, 2003, following the methodology in its Business Practices. The Commission also concluded that remedial action should not be prospective only, explaining that certain parties should not be allowed to retain transmission capacity that they should not have received in the first place. Further, the Commission emphasized, in the event that Midwest found that its methodology set forth in its Business Practices was inadequate and needed to be changed, the Commission directed Midwest ISO to vet any changes through its stakeholder process and, if necessary, file the proposed tariff language with the Commission.

Requests for Rehearing

6. Midwest ISO, DTE Energy Trading, Inc. (DTET), and PSEG Energy Resources & Trade LLC (PSEG ER&T) filed requests for rehearing of the March 8 Order. Midwest ISO requests that the Commission provide clarification and guidance with respect to certain overarching principles and methodologies for queuing and processing rollover requests, and requests that the Commission convene a technical conference. In the alternative, Midwest ISO seeks rehearing and argues that the Commission erred in the March 8 Order by: (1) finding that Midwest ISO's methodology set forth in the October 31 Notice is inconsistent with the Commission's policies and precedent and by requiring Midwest ISO to reprocess the 2004 queue; (2) directing Midwest ISO to establish a new methodology for processing rollover requests; and (3) failing to provide adequate guidance.

7. DTET requests that the Commission: (1) grant rehearing of the March 8 Order's rejection of DTET's request that any relief herein be granted on a prospective basis; (2) provide guidance in the form of certain objective core principles to be adopted by transmission providers as part of their respective methodologies for processing the transmission queue or direct the Midwest ISO to reprocess the queue pursuant to such principles; and/or (3) convene a technical conference for purposes of addressing the transmission queuing issues raised herein.

8. PSEG ER&T argues that the Commission erroneously determined that the Midwest ISO should reprocess its transmission queue beginning January 1, 2004. Second, PSEG ER&T argues that if the Commission determines that it did not erroneously require Midwest ISO to reprocess its transmission queue beginning January 1, 2004, the Commission erred: (i) by failing to specify a date certain by which Midwest ISO must file a compliance filing setting forth its methodology for reprocessing the

transmission queue for service to the Michigan-Ontario (MI-IMO) interface beginning January 1, 2004; (ii) by failing to specify another date certain by which Midwest ISO must reprocess its transmission queue under the proposed new methodology; (iii) by failing to specify another date certain by which Midwest ISO must institute a process for resolving its methodology for processing its transmission queue for service beginning January 1, 2005 and afterward; and (iv) by requiring any remedial action by MISO to become effective as of January 1, 2004.

9. Tenaska, Cargill and TransAlta Energy Marketing (U.S.) Inc. (TransAlta) filed answers to Midwest ISO's request for rehearing.

Discussion

Procedural Matters

10. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (d) (2003), provides that the Commission will not permit answers to a request for rehearing. We will accordingly reject Tenaska's, Cargill's and TransAlta's answers.

Analysis

11. As discussed further below, we will deny the rehearing requests filed in this proceeding. We will also deny Midwest ISO's request that the Commission provide it clarification and guidance with respect to certain principles and strawman proposals. These matters are more appropriately addressed in a petition for declaratory order. However, in the context of Midwest ISO's rehearing requests, we will clarify for Midwest ISO and the parties to this proceeding what Midwest ISO's OATT and Commission precedent require. Thus, in this regard, we will explain for Midwest ISO what its OATT and Commission precedent require it to do. Finally, we will deny Midwest ISO's and DTET's requests for a technical conference and DTET's request that the Commission commence a rulemaking proceeding.

Requests for Rehearing

12. Midwest ISO argues that the March 8 Order strikes down Midwest ISO's existing methodology for processing rollover requests and requires the Midwest ISO to both reprocess the 2004 queue and adopt a new mechanism for handling rollover requests on a prospective basis. Midwest ISO asserts that the March 8 Order provides little guidance on how this can be achieved.

13. Midwest ISO argues that the March 8 Order admits that section 2.2 of the Midwest ISO's OATT does not contain a process for handling rollover rights and directs Midwest

ISO to reprocess the queue following the methodology in its Business Practices. Midwest ISO asserts that, while instructive, the Business Practices (specifically, section 9.3.1) language is inadequate in the absence of further guidance to serve as a basis for developing both a retroactive correction mechanism and prospective methodology. Midwest ISO argues that given the fact that Midwest ISO's rollover request processing has already been the subject of multiple complaints, the Commission's failure to provide further detailed guidance in its March 8 Order demonstrates a lack of reasoned decision making.

14. DTET argues that the March 8 Order failed to take remedial action addressing Midwest ISO's processing of the transmission queue on a prospective basis. DTET argues that in addition to violating section 206 of the FPA, the March 8 Order opens the flood gates for disaffected customers to continually challenge the processing of the transmission queue for the sole purpose of advancing their respective queue position.

15. PSEG ER&T requests that the Commission reverse its conclusion that Midwest ISO should reprocess its transmission queue beginning January 1, 2004. It argues that given the lack of detail in Midwest ISO's OATT and Business Practices regarding procedures to analyze competing requests, Midwest ISO reasonably exercised its discretion and did not unduly discriminate against any transmission customer. In addition, PSEG ER&T argues that the Commission incorrectly concluded that Midwest ISO's approach would preclude new requests from ever competing with rollover requests and that Midwest ISO's actions contravened Commission policy. In support of this argument, PSEG ER&T states that Midwest ISO allowed new requests for transmission service to compete with rollover requests that were already submitted.

16. If the Commission continues to find that Midwest ISO should reprocess the queue, PSEG ER&T contends that the March 8 Order provides insufficient guidance as to how Midwest ISO should reprocess its queue. PSEG ER&T argues that Midwest ISO's Business Practices provide insufficient detail to resolve Midwest ISO's transmission queue and that the March 8 Order is not clear as to whether, if the Midwest ISO were to file a proposed methodology, such methodology would apply to Midwest ISO's queue for service beginning January 1, 2004 or whether it would apply only to the queue for service beginning January 1, 2005. Additionally, PSEG ER&T argues that the March 8 Order is unclear as to the consequences (e.g., financial) if Midwest ISO determines that different parties should have received service beginning January 1, 2004, and thus should take service under the queue as reprocessed. Finally, it argues that the March 8 Order sets forth no deadline by which Midwest ISO should reprocess its queue or file such proposed tariff language and requests that the Commission establish such deadlines.

Commission Determination

17. In denying the rehearing requests, we disagree with the primary assertion that the Commission did not provide adequate guidance on how Midwest ISO should reprocess

its transmission queue and that the Commission somehow was directing Midwest ISO to establish a new methodology for processing rollover requests. In the March 8 Order, the Commission directed Midwest ISO to reconsider requests for transmission service that were submitted from March 2003 through December 31, 2003, consistent with its Business Practices. The Commission concluded that on October 31, 2003, Midwest ISO posted on its OASIS a new approach to processing rollover requests that was contrary to the approach set forth in its Business Practices. In particular, Midwest ISO's Business Practices provided that if a new request could not be accommodated, the new customer could proceed with an impact study to determine if any upgrades were necessary to accommodate the request, or it could have its request held in Study mode until such time as other customers exercise their rollover rights.³ Midwest ISO's October 31, 2003, posting, however, directly contravened that approach. Rather than provide that new requests could be held in Study mode until rollover rights were subsequently exercised, Midwest ISO's new approach specifically limited competing requests to those submitted after a rollover request is submitted.⁴ Accordingly, the Commission rejected this unsupported change and required Midwest ISO to reprocess the transmission queue following the methodology set forth in its Business Practices. In other words, the Commission told Midwest ISO to go back and reprocess the queue following the approach it used prior to its October 31 Notice.⁵ Contrary to Midwest ISO's assertions,

this did not strike down Midwest ISO's existing methodology nor did it require Midwest ISO to adopt a new mechanism for handling rollover requests on a prospective basis. The

³ In significant part, the Business Practices provided, as previously noted in the March 8 Order, that: "If the new request cannot be accommodated, the new customer will have the option of proceeding with an impact study to determine any upgrades necessary to accommodate the request, or holding its request in Study mode until such time as other customers exercise their rollover rights." 106 FERC ¶ 61,230 at P 49 (emphasis added in March 8 Order).

⁴ 106 FERC ¶ 61,230 at P 50.

⁵ This approach would then be used to reconsider Tenaska's and Cargill's requests for transmission service, as well as other transmission service requests that were submitted from March 2003 through December 31, 2003. In addition, this approach would continue to be used prospectively from December 31, 2003, because that would be the only methodology that Midwest ISO had in place.

order simply told Midwest ISO to use the methodology that it was previously using.⁶

18. Cargill's complaint supports the Commission's view point, in that Cargill explicitly complained that Midwest ISO's October 31 Notice was an eleventh-hour, unilateral change that conflicted with both its OATT and Business Practices and should be rejected. In response, Midwest ISO never argued that it did not have an existing approach to processing transmission requests, but rather focused on arguing in support of its new approach announced in its October 31 Notice. If, as it now appears Midwest ISO is intimating, it never had a specific documented approach to processing its queue prior to its October 31 Notice to which it could return, Midwest ISO was still obligated to process its transmission queue in a manner consistent with its OATT, its Business Practices, and Commission precedent. With respect to those Business Practices, the Commission specifically recognized in the March 8 Order that Midwest ISO's existing Business Practices (prior to the October 31 Notice) allowed new requests to compete with later filed rollover requests and found this to be an appropriate practice. There is nothing more the Commission needed to or could have done.

19. DTET's argument that the Commission violated section 206 of the FPA by failing to take remedial action addressing Midwest ISO's processing of the transmission queue

⁶ Contrary to Midwest ISO's argument, it is irrelevant that section 2.2 of the OATT "does not contain a process for handling rollover requests." Midwest ISO Rehearing Request at 39 (quoting March 8 Order). Pursuant to Order No. 888 and the pro forma tariff, Midwest ISO was required to process transmission requests consistent with Order No. 888 and the pro forma tariff. In Order No. 888-A, the Commission explained that it did not specify the mechanics by which the right of first refusal mechanism would be exercised, but encouraged utilities and their customers to include specific procedures for exercising the right of first refusal in future transmission service agreements executed under the pro forma tariff. In addition, utilities were free to make section 205 filings proposing additions to their OATTs to specify generic procedures for dealing with the issue. Midwest ISO chose not to take either approach. Instead, Midwest ISO chose to process transmission requests as it interpreted Order No. 888, its own OATT and Business Practices and Commission precedent and to leave any controversy to resolution on a case-by-case basis. Midwest ISO cannot now be heard to argue that because it chose not to file specific procedures with the Commission that this left it devoid of any methodology to follow and that the only way it can now process transmission requests submitted prior to the Commission's order is if the Commission, after the fact, tells it how to do so. This would mean that Midwest ISO is now arguing that it had no method for processing transmission requests and was processing such requests on an ad hoc basis, a clear violation of its OATT and Order No. 888. It is Midwest ISO's responsibility, pursuant to Order No. 888 and its OATT, to process transmission requests in a just and reasonable manner and there is sufficient guidance in Order No. 888, the pro forma tariff and Commission precedent to permit it to do so.

on a prospective basis is unavailing. DTET appears to misunderstand the Commission's directive in the March 8 Order. The March 8 Order found the October 31 Notice to be unreasonable and contrary to Commission precedent and policy, as described above. In light of this finding, the Commission directed Midwest ISO to reprocess the transmission queue following the methodology in its Business Practices, *i.e.*, the methodology it was previously using. In other words, Midwest ISO was directed to process the transmission queue as if the October 31 Notice had not been posted on its OASIS. Thus, the methodology in place prior to the October 31 Notice is the methodology that would continue to be used prospectively because, of course, that is the only methodology that Midwest ISO had in place.

20. PSEG ER&T's argument that Midwest ISO reasonably exercised its discretion and did not unduly discriminate against any transmission customer given the lack of detail in Midwest ISO's OATT and Business Practices is similarly unavailing. As explained above, PSEG ER&T misses the point of the order. The Commission was not reviewing Midwest ISO's methodology announced in its October 31 Notice under section 205 of the FPA to determine whether it was just and reasonable. Rather, the Commission was responding to two complaints that the Midwest ISO had improperly imposed a new policy through its October 31 Notice. The Commission agreed with the complaints and directed Midwest ISO to reprocess the transmission queue following the methodology in its Business Practices that existed prior to the October 31 Notice.

21. Further, we find PSEG ER&T's argument that the March 8 Order is unclear as to the financial consequences of Midwest ISO's reprocessing of the transmission queue to be irrelevant. As we stated in the March 8 Order, "[c]ertain parties should not be allowed to retain transmission capacity that they should not have received in the first place."⁷ We expect Midwest ISO to reprocess its queue and to deal with any financial consequences that may arise.

22. Finally, we agree with PSEG ER&T that a deadline for Midwest ISO to reprocess its queue is necessary. While we initially expected that the Midwest ISO would timely reprocess its queue, that has not happened. Accordingly, we will require Midwest ISO to submit a compliance filing within forty-five days of the date of this order reflecting that it reprocessed its transmission queue. We disagree with PSEG ER&T, however, that a deadline should be set for Midwest ISO to file proposed tariff language. In the March 8 Order, the Commission stated that if Midwest ISO were to find that its methodology set forth in its Business Practices is inadequate and needs to be changed, it could file proposed tariff language with the Commission. Such a filing would be pursuant to section 205 of the FPA and would be for prospective application only. Moreover, any such section 205 filing would be at the discretion of Midwest ISO as the Commission has

⁷ 106 FERC ¶ 61,230 at P 53.

no authority to order that a section 205 filing be made.⁸ Nevertheless, given the controversy Midwest ISO's current tariff and Business Practices have engendered, it may be advisable for Midwest ISO to make such a tariff filing.

Request for Guidance on Proposed Principles & Models for Queuing and Processing Rollover Requests

23. Midwest ISO requests the Commission's clarification and guidance with respect to certain "overarching" principles and methodologies for queuing and processing rollover requests for the purpose of reprocessing its transmission queue for service beginning January 1, 2004, as well as for processing its transmission queue on a prospective basis. Midwest ISO states that it presented these principles and methodologies to its Business Practices Working Group (BPWG) on March 22 and April 2, 2004. In particular, Midwest ISO requests Commission guidance on twelve articulated principles. Midwest ISO states that these principles have been broadly endorsed by Midwest ISO's stakeholders except for two.⁹ These two principles state that: (1) Priority amongst competing originals is based first on the duration of the requested service, and second on queue time; and (2) During competition based on duration, queue-time is not relevant between the competing original and the renewal. Only duration matters in the competition. Midwest ISO explains that the majority of the stakeholders participating in

⁸ 16 U.S.C. § 824d (2000).

⁹ The principles endorsed by Midwest ISO's stakeholders include: (1) Renewal requests ("renewals") are subject to competition from longer-term new requests ("originals"); (2) Priority amongst renewals is based on queue time; (3) A given transmission customer's original request can compete with that same customer's renewal request; (4) Renewals (with unlimited rollover rights) may be conditionally accepted upon receipt. The condition of acceptance is that in order to retain capacity, the renewal customer must match longer duration competing original(s) during competition on duration; (5) The renewal queue for a specific date is comprised of conditionally confirmed renewal requests; (6) An original service request is eligible to be placed in the original request queue, if and only if: (a) Its start date and time coincides with an expiring long-term request that is eligible for renewal, (b) It is at least one year in duration, (c) It is queued before the close of the minimum 60-day window for exercising renewal rights; (7) The original request queue will be comprised of conditionally accepted and confirmed competing original requests. (The condition of acceptance is that sufficient capacity remains to accommodate the request after competition on duration is complete.); (8) The size of the original competing request queue will be limited to the capacity held by renewal rights holders; (9) A later-queued original request can bump an earlier-queued original request if it is of longer duration; (10) During competition based on duration, renewal customers have three business days to confirm for longer-term service.

the BPWG believe that the original queue priority should be determined based solely on queue time, and prefer that only earlier-queued originals compete with later-queued renewals. In contrast, Midwest ISO states that priority among competing originals should be based first on the duration of the requested service, and second on queue time.

24. Midwest ISO then asks for guidance with respect to two basic models that it could use for processing the queue and allocating capacity among new requests for service and rollover requests.¹⁰ The first model is titled “One-On-One.” Essentially, under this model the last queued renewal must match against the longest term original. Also, the next to last rollover is matched against the second queued original and this process is repeated until each renewal is paired with an original. A rollover customer has three business days to agree to match the duration of the competing original request, and the transmission request queue would be processed in a single round.

25. The second model is titled “Hybrid.” This model contemplates one-on-one competition with multiple rounds. A matched original requestor is not out of the queue, but goes up against the next entity in the rollover queue renewal. The longest original requestor competes against the last queued rollover. If the rollover customer matches, it gets reservation at the matched MWs and duration. The original requestor then competes against the next queued rollover. If a rollover matches a given original request, the original requestor at the bottom of the original request queue is eliminated. If the rollover requestor does not match, it is eliminated from the queue.

26. Midwest ISO states that a third model was also presented before the BPWG, but because it received no support from the stakeholders, it has been eliminated. Midwest ISO explains that this model was based on the principle that all rollover customers must match the longest original request. If a rollover customer matches, it gets a reservation at matched MW and duration. Under this option, the last queued un-matching rollover customer[s] loses capacity sufficient to accommodate the winning competitor and is eliminated from the queue and the remaining un-matching rollovers compete against next longest original request.

Commission Determination

27. Initially, we will deny Midwest ISO’s request that the Commission provide it clarification and guidance with respect to twelve “overarching” principles and three

¹⁰ Midwest ISO states that these options were presented to a Midwest ISO Business Practices Working Group on March 22 and April 2, 2004, and that the parties were unable to reach a resolution. Midwest ISO also states that a third option was also proposed, but because it did not receive stakeholder support, it has been eliminated.

strawman proposals that it indicates were presented at a BPWG meeting on March 22, 2004. These matters are more appropriately addressed in a petition for declaratory order,¹¹ which Midwest ISO is free to file at any time, where the issues raised can be explored on a more substantial record and with the input of all interested parties. However, in order to facilitate Midwest ISO's compliance with the March 8 Order, we will clarify for Midwest ISO and the parties to this proceeding what Midwest ISO's OATT and Commission precedent require Midwest ISO to do.

28. Midwest ISO's most significant confusion appears to be with its attempt to impose a "duration" requirement on its processing of long-term firm transmission service requests. This attempt is simply contrary to Midwest ISO's OATT and Order No. 888. section 13.2 of Midwest ISO's OATT, consistent with section 13.2 of the pro forma tariff, states that "Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis, i.e., in the chronological sequence in which each Transmission Customer has reserved service."¹² Therefore, as Midwest ISO processes new requests for service, priority must be based solely on queue time.¹³ In other words, a later-submitted new request cannot bump an earlier submitted new request for a shorter duration.

29. Next, Midwest ISO attempts to allow only later-submitted new service requests to compete with earlier-submitted requests to roll over existing service. This is directly contrary to Midwest ISO's Business Practices that provide for competing requests to be made prior to rollover requests.

30. Midwest ISO's attempt to allow only later-submitted new requests to be competing requests would unreasonably disrupt the expectations of customers under Midwest ISO's OATT and Business Practices who have already submitted their rollover requests. This is demonstrated by the situation in which Tenaska found itself with respect to its March 6, 2002 request to roll over its existing reservation for 102 MW of service with delivery at the MI-IMO interface beginning January 1, 2004. At the time Tenaska submitted its rollover request, there were no outstanding new requests for such service. By exercising its rollover rights, under Midwest ISO's proposal, Tenaska would be required to match competing new service requests submitted after it exercised its rollover right. However, if instead of submitting the rollover request, Tenaska had

¹¹ See 18 C.F.R. § 385.207(a)(2) (2003); see also 18 C.F.R. § 381.302(a) (2003).

¹² See also Standard 4.15 in Order No. 638, which states that "[c]onsistent with regulations and filed tariffs, reservation requests should be handled in a first-come-first-served order based on QUEUE_TIME."

¹³ We note that all three of Midwest ISO's methods fail to follow this approach.

simultaneously submitted a new request for the same 102 MW of service and a notice that it would not exercise the rollover rights associated with its existing reservation, it would have secured the desired reservation without being required to match any competing requests. Without adequate notice that its rollover request would be subject to competition from later-queued new service requests, Tenaska had no reason to expect that it would be disadvantaged by exercising its rollover request instead of seeking the desired transmission capacity in the form of a request for new service. Therefore, for the purpose of processing the transmission service queue for 2004, based on its existing OATT and Business Practices, Midwest ISO may only allow earlier-queued new service requests to compete with rollover requests.¹⁴

31. Finally, neither Midwest ISO's OATT nor its Business Practices establish a time period during which existing customers must agree to match the term of competing requests. While, in the March 8 Order, the Commission found the twenty-four hour period allowed by Midwest ISO to be unreasonable, we clarify that the period allowed for matching should be practicable given the sixty-day window between the close of the period during which rollover requests and new service requests must be submitted and the date that service commences. Because existing customers are on notice that they may be required to match the terms of longer-term competing requests, they should be aware of competing requests in the transmission queue and should have performed the necessary analysis to decide the longest term that they are willing to accept prior to being asked to match longer-term competing requests.

Rulemaking

32. DTET states that due to significant changes in, and the continuing evolution of, the electric industry, the Commission must now take a more proactive approach and address transmission queuing issues in a prospective manner.¹⁵ DTET notes that the

¹⁴ We also note that Midwest ISO's Business Practices do not provide any indication that requests to rollover existing long-term reservations will be treated differently from new service requests in the processing of transmission service requests.

¹⁵ Specifically, DTET states that the Commission must ensure that the processing

Commission could take the following courses of action for implementing such an approach. First, it could institute a generic rulemaking proceeding focused on developing standardized rules for processing the transmission queue, with a particular focus on the treatment of "competing" requests for long-term, firm service. Once final, these rules would be incorporated as part of the terms and conditions of transmission providers' respective OATTs. Alternatively, it asserts, the Commission could keep the development of specific transmission queuing methodologies at the transmission provider level, consistent with current Commission policy. If the Commission chooses the latter option, DTET requests that the Commission establish certain "bedrock," or "core," principles that transmission providers must incorporate into their respective methodologies for processing the transmission queue.

33. DTET's request that the Commission commence a rulemaking proceeding to provide standardized practices for transmission queuing is beyond the scope of this proceeding and is rejected.¹⁶ Moreover, in Order No. 888-A the Commission specifically chose not to impose an industry-wide methodology for processing rollover requests, but instead indicated that it would address such issues on a case-by-case basis if and when a dispute arises.¹⁷ While DTET suggests that circumstances warrant the Commission, on a generic basis, to re-examine these matters, we are not persuaded that circumstances are so different now as to warrant such a generic re-examination of these matters. In any event, in Order No. 888-A, the Commission did encourage utilities and their customers to include specific procedures for exercising the right of first refusal in further transmission service agreements and further emphasized that utilities are free to make section 205 filings proposing additions to the pro forma tariff to specify generic procedures for dealing with these issues.¹⁸

of the transmission queue is undertaken pursuant to a fair and objective set of criteria that reflects the competing value of transmission capacity to different classes of customers, i.e., entities with long-term load-serving obligations and entities that participate in physical wholesale power markets on a purely competitive basis. It states that such an approach is critical to avoiding unnecessary and new seams issues that could impede the successful implementation of competitive wholesale power markets - especially in the Midwest.

¹⁶ See, e.g., PJM Interconnection, L.L.C., et al., 107 FERC ¶ 61,087 at P 71 (2004) (finding that DTE Energy's request that the Commission promulgate principles to be followed by interconnected transmission providers to be beyond the scope of the proceeding).

¹⁷ See Order No. 888-A at 30,198.

¹⁸ Id.

Technical Conference

34. Midwest ISO and DTET request that the Commission convene a technical conference to discuss the issues related to processing the transmission queue. PSEG ER&T, however, opposes the convening of a technical conference. It asserts that given Midwest ISO's BPWG meetings to discuss how Midwest ISO should reprocess its queue or file proposed tariff language, a technical conference could only delay the resolution of these issues, instead of capitalizing on the momentum that Midwest ISO built in its stakeholder process.

35. We concur with PSEG ER&T and will not convene a technical conference. Given that Midwest ISO's stakeholder process has already made significant progress in resolving the issues concerning how Midwest ISO should process its transmission queue, and given the further guidance provided in this order, the commencement of an additional forum would only be redundant and unnecessary. Accordingly, Midwest ISO should continue with its stakeholder process, to the extent necessary, to achieve resolution of these issues.

The Commission orders:

(A) The requests for rehearing are hereby denied.

(B) Midwest ISO is hereby directed to submit a compliance filing, within forty-five days of the date of this order, reflecting that it reprocessed its transmission queue, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.